SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

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FILED
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October Term, 1970

No. 1580

CASCADE CAR WASH,

Petitioner,

vs.

LAURENT WATCH CO., INC., doing business as CASCADE CAR WASH,

Debtor-Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

LEE J. COHEN,
458 South Spring Street,
Los Angeles, Calif. 90013
Attorney for Respondent.

Of Counsel:
BERNFELD, COHEN, FREEMAN & FELDMAN,
an Incorporated Law Firm,
458 South Spring Street,
Los Angeles, Calif. 90013.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

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Question Presented.

Should this Honorable Court grant certiorari to review findings of fact made by a Referee in Bankruptcy which have been determined by both the United States District Court and the United States Court of Appeals for the Ninth Circuit not to be clearly erroneous?

Relevant Rules.

The pertinent portion of Rules 19 and 23, United States Supreme Court Rules, are set forth in Appendix hereto as is Rule 52(a), Federal Rules of Civil Procedure.

Statement of the Case.

Petitioner seeks to review three orders of a Referee in Bankruptcy dated August 7, 1968, August 21, 1968 and September 6, 1968. Both the United States District Court and subsequently the United States Court of Appeals for the Ninth Circuit have determined these orders should be affirmed because they are based upon findings of fact supported by the evidence. All opinions are set forth in appendix form to the Petition for Writ of Certiorari.

The specific factual questions passed upon by the trier of fact were whether Respondent's leasehold was forfeited to Petitioner and whether certain objects affixed to real property were fixtures.

A third point—whether the Referee had power to modify a prior order—is apparently not now urged.

ARGUMENT.

Not a Single Reason for Granting the Writ Has Been Urged by Petitioner and None Exists.

Both the index and body of the Petition for Writ of Certiorari may be searched in vain for argument amplifying the reasons for the allowance of the writ as required by Rule 23(1)(h), United States Supreme Court Rules. In fact, no reasons are stated at all—although the Petition intertwines fact and argument thereon in contravention of universally accepted appellate practice.

It is not urged—and it does not appear—that there is any conflict in decisions, or important question of federal law, or grave departure from the usual course of judicial proceedings, or any of the other reasons for granting certiorari as set forth in Rule 19, United States Supreme Court Rules.

What does appear is that a referee in bankruptcy made a factual determination as to two real property issues. Under existing practice, the reviewing court affirms unless "clearly erroneous". Rule 52(a) F.R. Civ. P. Both the United States District Court and the United States Court of Appeals for the Ninth Circuit have carefully reviewed the record and found the findings not to be clearly erroneous. Petitioner simply attempts to bypass those determinations and retry the issues anew.

It is respectfully submitted that the Petition for Writ of Certiorari borders on frivolity.

Conclusion.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

LEE J. COHEN,
Counsel for Respondent.

Of Counsel:
BERNFELD, COHEN, FREEMAN & FELDMAN,
an Incorporated Law Firm.

APPENDIX.

Rule 19, Rules of the United States Supreme Court.

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgment of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari.

Rule 23, Rules of the United States Supreme Court.

1. The petition for writ of certiorari shall contain.

. . .

(h) A direct and concise argument amplifying the reasons relied on for the allowance of the writ. See Rule 19.

Rule 52(a), Federal Rules of Civil Procedure.

(a) EFFECT. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).